

111TH CONGRESS
1ST SESSION

H. R. 2609

To establish an Office of Insurance Information in the Department of the
Treasury.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Mr. KANJORSKI (for himself, Mrs. BIGGERT, Mr. MOORE of Kansas, Mr. CAPUANO, Ms. BEAN, Mr. ROYCE, and Mr. SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish an Office of Insurance Information in the
Department of the Treasury.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insurance Information
5 Act of 2009”.

6 **SEC. 2. OFFICE OF INSURANCE INFORMATION.**

7 (a) DUTIES OF SECRETARY.—Section 321(a) of title
8 31, United States Code, is amended—

1 (1) in paragraph (7), by striking “and” at the
2 end;

3 (2) in paragraph (8)(C), by striking the period
4 at the end and inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(9) serve as the principal advisor to the Presi-
8 dent and the Congress on domestic and international
9 policy issues in connection with all lines of insurance
10 except health insurance.”.

11 (b) ESTABLISHMENT OF OFFICE.—Subchapter I of
12 chapter 3 of title 31, United States Code, is amended—

13 (1) by transferring and inserting section 312
14 after section 313;

15 (2) by redesignating sections 313 and 312 (as
16 so transferred) as sections 312 and 314, respec-
17 tively; and

18 (3) by inserting after section 312 (as so redes-
19 ignated) the following new section:

20 **“SEC. 313. OFFICE OF INSURANCE INFORMATION.**

21 “(a) ESTABLISHMENT.—There is established within
22 the Department of the Treasury the Office of Insurance
23 Information.

24 “(b) LEADERSHIP.—The Office shall be headed by a
25 Director, who shall be appointed by the Secretary of the

1 Treasury. The position of such Director shall be a career
2 reserved position in the Senior Executive Service.

3 “(c) FUNCTIONS.—

4 “(1) AUTHORITY PURSUANT TO DIRECTION OF
5 SECRETARY.—The Office shall have the authority,
6 pursuant to the direction of the Secretary, as fol-
7 lows:

8 “(A) To receive and collect (directly from
9 the States and from other sources), and to ana-
10 lyze and disseminate, data and information, and
11 to issue reports, regarding all lines of insurance
12 except health insurance, except that—

13 “(i) the submission of any non-pub-
14 licly available data and information to the
15 Office shall be voluntary and such submis-
16 sion shall not constitute a waiver of, or
17 otherwise affect, any privilege or confiden-
18 tiality protection to which the data or in-
19 formation is otherwise subject;

20 “(ii) to the extent that any such data
21 and information has already been received
22 or collected by, or can efficiently be re-
23 ceived or collected by, the States (including
24 the insurance commissioners of the
25 States), the National Association of Insur-

1 ance Commissioners, or any other appro-
2 priate source, the Office may enter into an
3 information-sharing agreement with such
4 source to provide for the receipt of such
5 data by the Office;

6 “(iii) any requirement under Federal
7 or State law to the extent otherwise appli-
8 cable, or any requirement pursuant to a
9 written agreement in effect between the
10 original source of any non-publicly avail-
11 able data or information and the source of
12 such data or information to the Office, re-
13 garding the privacy or confidentiality of
14 any data or information in the possession
15 of the source to the Office, and any privi-
16 lege arising under Federal or State law
17 (including the rules of any Federal or
18 State court) with respect to such data or
19 information, shall continue to apply to
20 such data or information after the data or
21 information has been provided pursuant to
22 this subparagraph to the Office;

23 “(iv) the Office shall treat as con-
24 fidential and privileged any data or infor-
25 mation obtained from any source that is

1 entitled to confidential treatment under ap-
2 plicable State or Federal law or regula-
3 tions, or under any agreement to which the
4 source is a party and shall take all reason-
5 able steps to oppose any effort to secure
6 disclosure of the data or information by
7 the Office;

8 “(v) the Office may not in any case
9 disclose to any party any personally identi-
10 fiable information received or collected by
11 the Office pursuant to this subparagraph;
12 and

13 “(vi) any non-publicly available data
14 and information received or collected by
15 the Office pursuant to this subparagraph
16 shall be considered trade secrets and com-
17 mercial or financial information that is
18 privileged and confidential pursuant to sec-
19 tion 552(b)(4) of title 5, United States
20 Code, and may not be disclosed to the Ad-
21 visory Group established under subsection
22 (l).

23 “(B) To coordinate Federal efforts and es-
24 tablish Federal policy on international insur-

1 ance matters, including working with the Inter-
2 national Association of Insurance Supervisors.

3 “(C) To determine, in accordance with
4 subsection (e), whether State insurance meas-
5 ures are inconsistent with such policy, as in-
6 cluded in covered agreements (as such term is
7 defined in subsection (m)).

8 “(D) To serve as a liaison between the
9 Federal Government and the individual and sev-
10 eral States regarding insurance matters of na-
11 tional importance and international importance.

12 “(E) To serve as a primary advisor, re-
13 garding the export promotion of United States
14 insurance products and services, to the Treas-
15 ury representative to the Trade Promotion Co-
16 ordinating Committee.

17 “(2) ADVISORY FUNCTIONS.—To advise the
18 Secretary on major domestic and international in-
19 surance policy issues, including matters that affect
20 consumers and insurers, such as, and including, fi-
21 nancial guarantee insurance, catastrophe insurance,
22 and reinsurance requirements.

23 “(d) SCOPE.—The authority of the Office and the Di-
24 rector with respect to insurance shall extend to all lines
25 of insurance except health insurance, as determined by the

1 Secretary based on section 2791 of the Public Health
2 Service Act (42 U.S.C. 300gg–91).

3 “(e) PREEMPTION OF STATE INSURANCE MEAS-
4 URES.—

5 “(1) STANDARD.—Subject to paragraph (3), a
6 State insurance measure shall be preempted if, and
7 only to the extent that, the measure—

8 “(A) treats a non-United States insurer
9 more or less favorably than a United States in-
10 surer domiciled in such State; and

11 “(B) is determined, in accordance with this
12 subsection, to be inconsistent with Federal pol-
13 icy on international insurance matters as—

14 “(i) established by the Office; and

15 “(ii) included in a covered agreement.

16 “(2) DETERMINATION.—

17 “(A) AUTHORITY OF DIRECTOR.—Pursu-
18 ant to the subsection (c)(1)(C), the Director
19 may determine whether inconsistencies referred
20 to in paragraph (1)(B) of this subsection exist.

21 “(B) NOTICE OF POTENTIAL INCONSIST-
22 ENCY.—Before making any determination re-
23 garding whether an inconsistency referred to in
24 paragraph (1)(B) exists, the Director shall—

1 “(i) cause to be published in the Fed-
2 eral Register notice of the issue regarding
3 the potential inconsistency or preemption,
4 including a description of each State insur-
5 ance measure at issue and the Federal pol-
6 icy on international insurance matters em-
7 bodied in a covered agreement at issue;

8 “(ii) provide interested parties a pe-
9 riod of not less than 30 days during which
10 to submit written comments to the Office;
11 and

12 “(iii) in making the determination,
13 consider any comments received.

14 “(C) INITIAL DETERMINATION.—Upon
15 making any determination regarding whether
16 an inconsistency referred to in paragraph
17 (1)(B) exists, the Director shall—

18 “(i) cause to be published in the Fed-
19 eral Register notice of such determination;

20 “(ii) notify the appropriate State of
21 such determination; and

22 “(iii) in the case of determination that
23 such an inconsistency exists, establish a
24 reasonable period of time before a final de-

1 termination under subparagraph (D) is
2 made.

3 “(D) FINAL DETERMINATION.—In the case
4 of an initial determination that an inconsistency
5 referred to in paragraph (1)(B) exists, upon the
6 conclusion of the period referred to in subpara-
7 graph (C)(iii) of this paragraph with respect to
8 such determination, the Director shall make a
9 final determination of whether such inconsis-
10 tency still exists. If the Director determines that
11 such inconsistency still exists, the Director shall
12 cause to be published in the Federal Register
13 notice of such final determination and notify
14 the State and the Secretary of such final deter-
15 mination.

16 “(E) CONSIDERATION OF STAY BY SEC-
17 RETARY; EFFECTIVE DATE OF PREEMPTION.—
18 In the case of a final determination under sub-
19 paragraph (D) that an inconsistency referred to
20 in paragraph (1)(B) exists, the Secretary, after
21 consultation with the Director, shall determine
22 whether to stay preemption under paragraph
23 (3). Immediately upon such determination, the
24 Secretary shall cause to be published in the
25 Federal Register notice of whether the State in-

1 surance measure is preempted pursuant to
2 paragraph (1), to the extent of the inconsist-
3 ency, or whether preemption is stayed pursuant
4 to paragraph (3), and shall submit to the Con-
5 gress a copy of such notice. Any such preemp-
6 tion shall be effective upon the expiration of the
7 90-day period beginning upon the publication of
8 notice under this subparagraph unless the Con-
9 gress by its action prevents such effectiveness.

10 “(3) STAY.—Notwithstanding any determina-
11 tion by the Director that an inconsistency referred
12 to in paragraph (1)(B) exists, the Secretary shall
13 stay preemption under this subsection, before publi-
14 cation of notice of preemption under paragraph
15 (2)(E), if the Secretary determines that—

16 “(A) maintaining the State insurance
17 measure is necessary for prudential reasons, in-
18 cluding for—

19 “(i) the protection of policyholders
20 and policy claimants;

21 “(ii) the maintenance of the safety,
22 soundness, integrity or financial responsi-
23 bility of any entity involved in the business
24 of insurance or insurance operations; or

1 “(iii) ensuring the integrity and sta-
2 bility of the United States financial sys-
3 tem;

4 “(B) preemption will result in any need to
5 establish a supervisory or regulatory authority
6 of the Office or the Secretary over any entity
7 involved in the business of insurance or insur-
8 ance operations in the United States; or

9 “(C) preemption will result in a gap or
10 void in financial or market conduct regulation
11 of any entity involved in the business of insur-
12 ance or insurance operations in the United
13 States.

14 “(4) ADMINISTRATIVE REVIEW.—Any State
15 having an insurance measure for which a final deter-
16 mination is made pursuant to paragraph (2)(D) that
17 an inconsistency referred to in paragraph (1)(B) ex-
18 ists, and any other person aggrieved by such final
19 determination, shall have the right to appeal such
20 final determination of inconsistency to the Secretary,
21 but only if the Secretary receives notice of such ap-
22 peal before publication of notice of preemption under
23 paragraph (2)(E). The Secretary shall issue a deci-
24 sion concerning any such appeal before considering
25 whether to stay preemption under paragraph (3).

1 “(5) APPLICABILITY OF ADMINISTRATIVE PRO-
2 CEDURES ACT.—Determinations of inconsistency
3 pursuant to paragraph (2)(D) and of preemption
4 pursuant to paragraph (2)(E) shall be subject to the
5 applicable provisions of subchapter II of chapter 5 of
6 title 5, United States Code (relating to administra-
7 tive procedure), and chapter 7 of such title (relating
8 to judicial review).

9 “(6) LIMITATION.—No State may enforce a
10 State insurance measure to the extent that it has
11 been preempted pursuant to this subsection.

12 “(7) POLICIES AND PROCEDURES.—The Sec-
13 retary may, by publication in the Federal Register,
14 issue policies and procedures to implement this sub-
15 section and subsection (c)(1)(C).

16 “(f) SAVINGS PROVISIONS.—Nothing in this section
17 shall—

18 “(1) preempt any State insurance measure be-
19 cause of inconsistency with any agreement that is
20 not a covered agreement (as such term is defined in
21 subsection (m));

22 “(2) preempt any State insurance measure that
23 relates to an insurer’s rates, premiums, underwriting
24 practices, or coverage requirements for insurance
25 within that State, or to the application of the anti-

1 trust laws of any State to the business of insurance;
2 or

3 “(3) affect the preemption of any State insur-
4 ance measure otherwise inconsistent with and pre-
5 empted by Federal law.

6 “(g) CONSULTATION.—

7 “(1) DIRECTOR.—The Director shall consult
8 with the Advisory Group established under sub-
9 section (l) regarding—

10 “(A) any agreement described in sub-
11 section (e)(1)(B), before such agreement is en-
12 tered into; and

13 “(B) any initial or final determination
14 under subsection (e)(2) of whether an inconsis-
15 tency referred to in subsection (e)(1)(B) exists.

16 “(2) SECRETARY.—The Secretary shall consult
17 with the Advisory Group established under sub-
18 section (l) regarding whether or not to stay preemp-
19 tion under subsection (e)(3).

20 “(h) COORDINATION REGARDING COVERED AGREE-
21 MENTS.—Before entering into any covered agreement, the
22 United States or its representative shall coordinate with
23 State insurance regulators as designated by the National
24 Association of Insurance Commissioners to identify provi-
25 sions in the covered agreement that provide for the rec-

1 ognition of prudential measures with respect to the busi-
2 ness of insurance that are described in subsection
3 (m)(1)(B).

4 “(i) REPORTS TO CONGRESS.—

5 “(1) BIENNIAL REPORTS.—The Director, in
6 consultation with the insurance commissioners or su-
7 pervisors of the States, shall submit a report during
8 each Congress to the Committee on Financial Serv-
9 ices of the House of Representatives and the Com-
10 mittee on Banking, Housing, and Urban Affairs of
11 the Senate on the financial state of the insurance in-
12 dustry, meaningful trends in the industry, any ac-
13 tions taken by the Office pursuant to subsection (e)
14 (regarding preemption of inconsistent State insur-
15 ance measures), and any other information as
16 deemed relevant by the Director or as requested by
17 such Committees.

18 “(2) REPORTS ON STATE INSURANCE MEAS-
19 URES NOT PREEMPTED.—The Director shall submit
20 a report to each of the Committees referred to in
21 paragraph (1) of this subsection regarding any State
22 insurance measure that would have been preempted
23 but for any stay of preemption under subsection
24 (e)(3).

1 “(3) OTHER REPORTS.—The Director shall sub-
2 mit such other informal reports as the Director con-
3 siders necessary or as are requested by the Con-
4 gress.

5 “(j) USE OF EXISTING RESOURCES.—The Office
6 may employ personnel, facilities, and other Department of
7 the Treasury resources available to the Secretary on the
8 date of enactment of the Insurance Information Act of
9 2009 in carrying out this section, except as otherwise pro-
10 hibited by law.

11 “(k) RETENTION OF EXISTING REGULATORY AU-
12 THORITY.—Nothing in this section may be construed to
13 establish a general supervisory or regulatory authority of
14 the Office or the Department of the Treasury over the
15 business of insurance.

16 “(l) ADVISORY GROUP.—

17 “(1) ESTABLISHMENT.—There is hereby estab-
18 lished the Advisory Group to the Office of Insurance
19 Information (in this subsection referred to as the
20 ‘Advisory Group’).

21 “(2) MEMBERSHIP.—The Advisory Group shall
22 consist of no more than 13 members who shall be
23 appointed by the Secretary, and shall include—

1 “(A) State insurance commissioners or su-
2 pervisors, as nominated by the National Asso-
3 ciation of Insurance Commissioners;

4 “(B) a representative each of—

5 “(i) State legislators, as nominated by
6 the National Conference of State Legisla-
7 tures;

8 “(ii) the Department of Commerce;

9 “(iii) the Federal Trade Commission;

10 “(iv) the Office of the United States
11 Trade Representative;

12 “(v) the life insurance industry;

13 “(vi) the property and casualty insur-
14 ance industry;

15 “(vii) the reinsurance industry; and

16 “(viii) the insurance producer indus-
17 try; and

18 “(C) such other representatives of the in-
19 surance industry, consumer groups, and other
20 organizations as the Secretary determines are
21 appropriate.

22 “(3) DUTIES.—The sole functions of the Advi-
23 sory Group shall be to make recommendations to the
24 Secretary and the Director regarding the function of
25 the Office under subsection (c)(1)(B) and to consult

1 with the Director and the Secretary pursuant to
2 subsection (g).

3 “(m) DEFINITIONS.—For purposes of this section,
4 the following definitions shall apply:

5 “(1) COVERED AGREEMENT.—The term ‘cov-
6 ered agreement’ means a written bilateral or multi-
7 lateral recognition agreement that—

8 “(A) is entered into—

9 “(i) between the United States and
10 one or more foreign governments, authori-
11 ties, or regulatory entities; and

12 “(ii) after the date of the enactment
13 of the Insurance Information Act of 2009;
14 and

15 “(B) provides for recognition of prudential
16 measures with respect to the business of insur-
17 ance that—

18 “(i) adequately protect insurance con-
19 sumers in the United States; and

20 “(ii) are substantially equivalent to
21 the regulation by the States of the com-
22 parable subject matter.

23 “(2) NON-UNITED STATES INSURER.—The term
24 ‘non-United States insurer’ means an insurer, or re-
25 insurer, that is organized under the laws of a juris-

1 diction other than a State, but does not include any
2 United States branch of such an insurer.

3 “(3) OFFICE.—The term ‘Office’ means the Of-
4 fice of Insurance Information established by this sec-
5 tion.

6 “(4) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of the Treasury.

8 “(5) STATE.—The term ‘State’ means any of
9 the 50 States, the District of Columbia, the Com-
10 monwealth of Puerto Rico, the United States Virgin
11 Islands, Guam, American Samoa, the Trust Terri-
12 tory of the Pacific Islands, the Commonwealth of the
13 Northern Mariana Islands, and any other territory
14 of the United States.

15 “(6) STATE INSURANCE MEASURE.—The term
16 ‘State insurance measure’ means any State law, reg-
17 ulation, administrative ruling, bulletin, guideline, or
18 practice relating to or affecting the provision of in-
19 surance or reinsurance.

20 “(7) UNITED STATES INSURER.—The term
21 ‘United States insurer’ means—

22 “(A) an insurer, or reinsurer, that is orga-
23 nized under the laws of a State; or

24 “(B) a United States branch of a non-
25 United States insurer.

1 “(n) SAVINGS PROVISION.—Nothing in this section
 2 shall be construed to affect the development and coordina-
 3 tion of United States international trade policy or the ad-
 4 ministration of the United States trade agreements pro-
 5 gram.

6 “(o) AUTHORIZATION OF APPROPRIATIONS.—There
 7 are authorized to be appropriated for the Office such sums
 8 as may be necessary for each fiscal year.”.

9 (c) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
 10 AND RECOMMENDATIONS.—Section 111 of Public Law
 11 93–495 (12 U.S.C. 250) is amended by inserting “the Di-
 12 rector of the Office of Insurance Information of the De-
 13 partment of the Treasury,” after “Office of Thrift Super-
 14 vision,”.

15 (d) CLERICAL AMENDMENT.—The table of sections
 16 for subchapter I of chapter 3 of title 31, United States
 17 Code, is amended by striking the item relating to section
 18 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Office of Insurance Information.

“Sec. 314. Continuing in office.”.

19 **SEC. 3. TREATMENT OF CERTAIN PROVISIONS.**

20 (a) NON-SEVERABILITY OF CERTAIN PROVISIONS .—
 21 If any provision of subsection (e) or (h) of section 313
 22 of title 31, United States Code, as added by this Act, is
 23 declared or held invalid or unenforceable by any United
 24 States court, all provisions of each such subsection shall

1 be treated and deemed invalid and shall have no force or
2 effect of law.

3 (b) SEVERABILITY OF REMAINDER.—Notwith-
4 standing the invalidation of subsections (e) and (h) of sec-
5 tion 313 of title 31, United States Code, as added by this
6 Act, under subsection (a) of this section, the validity of
7 the remainder of such section 313, and of the application
8 of such provisions to other persons and circumstances,
9 shall not be affected thereby.

○